

CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

OLC 76-0887

15 APR 1976

Honorable F. Edward Hebert, Chairman
Subcommittee on Investigations
Committee on Armed Services
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

We would appreciate your Subcommittee's consideration of certain additional amendments to the bill H. R. 11088, "To amend the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended, and for other purposes" at the hearing on the bill which is scheduled for 7 April 1976. These additional amendments are enclosed.

As a result of further careful review, additional amendments to the CIA retirement system to adopt certain provisions in the Civil Service retirement system were considered necessary to achieve conformity in the two retirement systems wherever applicable and appropriate. This further carries out the major purposes of H. R. 11088.

SEC. 202 of H. R. 11088 is amended to further amend section 221(b) of our Act to provide that a participant must at the time of retirement elect in writing not to provide any surviving spouse benefits as provided in section 221(b). This adopts a provision in Section 8339(j), Title 5, of the Civil Service retirement system.

New sections 205, 206, and 207 to H. R. 11088 would amend section 231 of our Act to allow persons who are separated or retired on a nondisability retirement to later apply under specified requirements for a disability retirement if a disabling condition existed at the time of separation or retirement. The changes also grant termination authority to the Director in those instances where there has been restoration of earning capacity; allow voluntary or involuntary retirement for such restored retirees; and assure that periods of voluntary or involuntary retirement do not count for service credit. These amendments adopt existing authorities in Section 8337, Title 5, Civil Service retirement system.



We appreciate your consideration of these additional amendments to our retirement Act at the scheduled hearing on H. R. 11088 to be held on 7 April.

The Office of Management and Budget has advised that there is no objection to presenting these amendments to H. R. 11088 from the standpoint of the Administration's program.

Sincerely,

SIGNED

George Bush
Director

Enclosure

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OLC:PLC:dlw [] (typed 1 April 1976)

AMENDMENTS TO H. R. 11088

CENTRAL INTELLIGENCE AGENCY RETIREMENT ACT
OF 1964 FOR CERTAIN EMPLOYEES, as amended
(78 Stat. 1043; 50 U.S.C. 403 Note)

AMENDMENTS TO H. R. 11088

On page 6, line 9 immediately after "specified." add the following:

"If at the time of retirement, the participant does not desire any surviving spouse to receive an annuity under this paragraph he shall so state in writing to the Director."

On page 9 after line 3 add new Sections 205, 206 and 207 as follows:

"SEC. 205. Section 231(a) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees as amended (78 Stat. 1043; U.S.C. 403 note), is amended by adding at the end thereof the following:

"Retirement for disability or incapacity may be approved only if the application is submitted before the applicant is separated from the Agency or within one year thereafter. This time limitation may be waived by the Director for a participant or annuitant who at the date of separation from the Agency or within one year thereafter is mentally incompetent, if the application is filed with the Agency within one year from the date of restoration of the participant or annuitant to competency or the appointment of a fiduciary, whichever is earlier."

"SEC. 206. Section 231(b) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended, (78 Stat. 1043; U.S.C. 403 note), is amended--

"(a) by inserting the figure "(1)" immediately after the letter "(b)"

substitute "one year" and

"(c) by adding at the end of the section a new paragraph (2) as follows:

"(2) If the annuitant receiving disability retirement annuity is restored to earning capacity, before becoming sixty years of age, payment of the annuity terminates on reemployment by the Government or one year after the end of the calendar year in which earning capacity is restored whichever is earlier. Earning capacity is restored if in each of two succeeding calendar years the income of the annuitant from wages or self-employment or both equals at least 80 percent of the current rate of pay of the position occupied at the time of retirement."

"SEC. 207. Section 231(c) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended, (78 Stat. 1043; 50 U.S.C. 403 note) is amended--

"(a) by inserting the figure "(1)" immediately after the letter "(c)";

"(b) by inserting immediately after the words "If a recovered" the words: "or restored";

"(c) by inserting immediately after the words "shall be considered" the words: "except for service credit";

"(d) by inserting immediately after the words "as of the date" the words: "of termination of the disability annuity";

"(e) by striking the words: "he was retired for disability";

adding the words: "or he may be placed by the Director in an involuntary retired status if he qualifies under the provisions of section 235(a).

"Retirement rights under this section shall be based on the provisions of this Act in effect as of the date the disability was discontinued."

"(g) by adding at the end of the section a new paragraph (2)

"(2) If, based on a current medical examination, the Director determines that a recovered annuitant has, before reaching age sixty-two, again become totally disabled due to recurrence of the disability for which he was originally retired, his terminated disability annuity (same type and rate) is reinstated from the date of such medical examination. If a restored-to-earning-capacity annuitant has not medically recovered from the disability for which retired and establishes to the Director's satisfaction that his income from wages and self-employment in any calendar year before reaching age sixty-two was less than 80 percent of the pay rate attached to the position from which he retired, his terminated disability annuity (same type and rate) is reinstated from the first of the next following year. If he has been allowed an involuntary or voluntary retirement annuity in the meantime, his reinstated disability annuity is substituted for it unless he elects to retain the former benefit."; and

"(h) renumber existing sections 205 through 212 in H. R. 11088 as sections 208 through 215 respectively."

SECTIONAL ANALYSIS AND EXPLANATION

TITLE II--RETIREMENT ACT AMENDMENTS

SEC. 202 of H. R. 11088 is amended to further amend section 221(b) of our Act to provide that a participant must at the time of retirement elect in writing not to provide any surviving spouse benefits as provided in section 221(b). This adopts a provision in Section 8339(j), Title 5, of the Civil Service retirement system.

The new section 205 amending H. R. 11088 amends section 231(a) of the Central Intelligence Agency Retirement Act to allow persons who are separated or retired on a nondisability retirement to later apply for a disability retirement if they had a condition existing at the time of separation or retirement that would have made them eligible for disability retirement. Such application would have to be made within one year from the date of separation or retirement. The time limit may be waived by the Director of Central Intelligence for a person who at the date of separation from the Agency or within one year thereafter is mentally incompetent, if the application for disability retirement is filed with the Agency within one year from the restoration of the person to competency or the appointment of a fiduciary, whichever is earlier.

This change will conform the Act to Section 8337, Title 5, of the Civil Service retirement system. The experience, to date, receiving such requests has been slight and it is not anticipated that this authority will result in any significant number of conversions.

New section 206 amends section 231(b) of the Act to grant authority for the termination of the annuity of a person retired on a disability but who is capable and actually earns wages or salary by other employment in an amount approximating his position with the Agency occupied at the time of retirement. This amendment applies only to restoration of earnings through reemployment.

The change to section 231(b) of the Act is based upon similar provisions in Section 8337(d), Title 5, of the Civil Service retirement system.

Section 231(c) of the Act is amended by new section 207 to establish authority to terminate a disability annuity to a retiree who has been restored to earning capacity and is a correlated change to that change proposed for section 231(b) above. The proposed change to section 231(c) allows termination of disability retirees who are restored to earning capacity; permits the Director to allow voluntary retirement for a restored disability retiree; and permits the Director to place in involuntary retirement a disability retiree who is recovered or restored to earning capacity. Further, the change ensures that the period in voluntary or involuntary retirement does not count for service credit.

This change to section 231(c) of the Act is based on similar provisions now in Section 8337(e), Title 5, of the Civil Service retirement system.

New section 207 further amends section 231(c) by adding a new paragraph to allow reinstatement of disability annuities that were terminated due to recovered or restored earning capacity if the retiree later again becomes disabled due to the disability for which originally retired or no longer earns a sufficient amount of earnings to satisfy the 80 percent rule on restoration of earning capacity. This change allows the retiree to remain in either voluntary or involuntary retirement if he had qualified for such retirement status at the time his disability annuity was terminated.

This change is also based on Section 8337(e), Title 5, of the Civil Service retirement system.

CHANGES IN EXISTING LAW

Changes in existing law made by the amendments to H. R. 11088 are shown as follows: existing law in which no change is proposed is shown in roman; existing law proposed to be omitted is enclosed in brackets; new matter is underscored.

CENTRAL INTELLIGENCE AGENCY RETIREMENT ACT OF 1964 FOR CERTAIN EMPLOYEES, as amended (78 Stat. 1043; 50 U.S.C. 403 Note)

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TITLE II--THE CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

PART C--COMPUTATION OF ANNUITIES

SEC. 221

* * * *

(b)(1) If a participant dies after having retired and is survived by a spouse to whom he or she was married at the time of retirement, or by a widow or widower whom he or she married after retirement, the spouse, widow, or widower is entitled to an annuity equal to 55 percent of the amount of the participant's annuity computed as prescribed in paragraph (a) of this section, up to the full amount of such annuity specified by the participant as the base for such survivor benefits at the time of retirement. The annuity of the participant shall be reduced by 2 1/2 per centum of any amount up to \$3,600 specified by the participant as the base for such survivor benefit plus 10 per centum of any amount over \$3,600 so specified. If at the time of retirement, the participant does not desire any surviving spouse to receive an annuity under this paragraph he shall so state in writing to the Director.

* * * *

PART D--BENEFITS ACCRUING TO CERTAIN PARTICIPANTS

Retirement for Disability or Incapacity-Medical Examination-Recovery

SEC. 231. (a) Any participant who has five years of service credit toward retirement under the system, excluding military or naval service that is credited in accordance with provisions of section 251 or 252(a)(2), and who becomes totally disabled or incapacitated for useful and efficient service by reason of disease, illness, or injury not due to vicious habits, intemperance, or willful misconduct on his part, shall, upon his own application or upon order of the Director, be retired on an annuity computed as prescribed in section 221. If the disabled or incapacitated participant is under sixty and has less than twenty years of service credit toward his retirement under the system at the time he is retired, his annuity shall be computed on the assumption that he has had twenty years of service, but the additional service credit that may accrue to a participant under this provision shall in no case exceed the difference between his age at the time of retirement and age sixty. Retirement for disability or incapacity may be approved only if the application is submitted before the applicant is separated from the Agency or within one year thereafter. This time limitation may be waived by the Director for a participant or annuitant who at the date of separation from the Agency or within one year thereafter is mentally incompetent, if the application is filed with the Agency within one year from the date of restoration of the participant or annuitant to competency or the appointment of a fiduciary, whichever is earlier.

(b) (1) In each case, the participant shall be given a medical examination by one or more duly qualified physicians or surgeons designated by the Director to conduct examinations, and disability shall be determined by the Director on the basis of the advice of such physicians or surgeons. Unless the disability is permanent, like examinations shall be made annually until the annuitant has reached the statutory mandatory retirement age for his grade as provided in section 235. If the Director determines on the basis of the advice of one or more duly qualified physicians or surgeons conducting such examinations that an annuitant has recovered to the extent that he can return to duty, the annuitant may apply for reinstatement or reappointment in the Agency within one year from the date his recovery is determined. Upon application the Director may reinstate any such recovered disability annuitant in the grade in which he was serving at time of retirement, or the Director may, taking into consideration the age, qualifications, and experience of such annuitant, and the present grade

of his contemporaries in the Agency, appoint him to a grade higher than the one in which he was serving prior to retirement. Payment of the annuity shall continue until a date ~~six months~~ one year after the date of the examination showing recovery or until the date of reinstatement or reappointment in the Agency, whichever is earlier. Fees for examinations under this provision, together with reasonable traveling and other expenses incurred in order to submit to examination, shall be paid out of the fund. If the annuitant fails to submit to examination as required under this section, payment of the annuity shall be suspended until continuance of the disability is satisfactorily established.

(2) If the annuitant receiving disability retirement annuity is restored to earning capacity, before becoming sixty years of age, payment of the annuity terminates on reemployment by the Government or one year after the end of the calendar year in which earning capacity is restored whichever is earlier. Earning capacity is restored if in each of two succeeding calendar years the income of the annuitant from wages or self-employment or both equals at least 80 percent of the current rate of pay of the position occupied at the time of retirement.

(c) (1) If a recovered or restored disability annuitant whose annuity is discontinued is for any reason not reinstated or reappointed in the Agency, he shall be considered, except for service credit, to have been separated within the meaning of paragraphs (a) and (b) of section 234 as of the date of termination of the disability annuity he was retired for disability and he shall, after the discontinuance of the disability annuity, be entitled to the benefits of that section or of section 241(a) except that he may elect voluntary retirement in accordance with the provisions of section 233 if he can qualify under its provisions or he may be placed by the Director in an involuntary retired status if he qualifies under the provisions of section 235(a). Retirement rights under this section shall be based on the provisions of this Act in effect as of the date the disability was discontinued.

(2) If, based on a current medical examination, the Director determines that a recovered annuitant has, before reaching age sixty-two, again become totally disabled due to recurrence of the disability for which he was originally retired, his terminated disability annuity (same type and rate) is reinstated from the date of such medical examination. If a restored-to-earning-capacity

annuitant has not medically recovered from the disability for which retired and establishes to the Director's satisfaction that his income from wages and self-employment in any calendar year before reaching age sixty-two was less than 80 percent of the pay rate attached to the position from which he retired, his terminated disability annuity (same type and rate) is reinstated from the first of the next following year. If he has been allowed an involuntary or voluntary retirement annuity in the meantime, his reinstated disability annuity is substituted for it unless he elects to retain the former benefit.

COST ESTIMATES

There is no experience factor to determine the cost estimates by adoption of these proposed changes to sections 221(b), 231(a) and (c). All expectations are that any increased costs would however be negligible. Similarly, there is no experience factor to determine the cost savings by the adoption of the change to section 231(b).